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No. 93-1636

IN THE

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

TOM SWINT, *et al.*,*Petitioners,*

v.

CHAMBERS COUNTY COMMISSION,

*Respondent.*

On Writ of Certiorari to the  
United States Court of Appeals for  
the Eleventh Circuit

BRIEF AMICI CURIAE SUPPORTING PETITIONERS OF  
AMERICAN CIVIL LIBERTIES UNION,  
ACLU OF ALABAMA, AND  
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

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## **QUESTION PRESENTED**

Whether the sheriff of a county is a final policymaker for the county in matters of law enforcement for purposes of county liability under 42 U.S.C. § 1983.

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The American Civil Liberties Union, the ACLU of Alabama, and the Lawyers' Committee for Civil Rights Under Law respectfully submit this brief *amici curiae* in support of petitioners. Pursuant to Rule 37, all parties before this Court have consented to the filing of this brief.

**INTEREST OF AMICI CURIAE**

The American Civil Liberties Union ("ACLU") is a nationwide, nonpartisan organization with nearly 300,000 members dedicated to preserving and defending constitutional rights. The ACLU of Alabama is one of its state affiliates. The ACLU has appeared before this Court on numerous occasions, both as counsel for parties and as *amicus curiae*. Because the

decision below would substantially curtail the ability of many individuals to obtain meaningful relief for violations of their constitutional rights by law enforcement officials, this case raises issues of significant concern to the ACLU and its members.

The Lawyers' Committee for Civil Rights Under Law is a national civil rights organization that was formed in 1963 by leaders of the American bar at the request of President Kennedy to provide legal representation to African-Americans who were being deprived of their civil rights. The Lawyers' Committee and its local affiliates have represented thousands of individuals who have brought claims against municipalities under 42 U.S.C. § 1983. Section 1983 is the primary vehicle for the enforcement of the constitutional protection of Equal Protection and Due Process with regard to state and local governments, including deprivations and injuries caused by discrimination on the basis of race, national origin, and gender. A decision affirming the court of appeals ruling could profoundly limit the availability of damage remedies under Section 1983 and the accountability of local governments for constitutional violations.

## STATEMENT OF THE CASE

Petitioners are the owners and patrons of the Capri Club, a night spot in Chambers County, Alabama. The owners and most Capri Club patrons are African-Americans. Pet. App. 4a, 54a.

In late 1990 and early 1991, several dozen local law enforcement officials conducted two raids on the Capri Club. The plans for the two raids were similar. In both instances, Sheriff James Morgan of Chambers County authorized a consortium of local law enforcement officials to surround the Capri Club. Pet. App. 49a. An undercover officer was sent inside to attempt an illegal-drug purchase. Once the purchase was made, the police stormed the club and held the clientele at gunpoint for between one and two hours. Pet. App. 5a, 6a.

The first raid was on December 14, 1990. The undercover officer made a small drug purchase from one customer at the club. Rather than arresting the seller, the officer immediately left and signaled to other officers waiting outside. Moments later eight officers dressed in black and wearing ski masks burst inside. Pet. App. 52a. They pointed shotguns at the patrons and ordered them to "hit the floor." Pet. App. 52a-53a. Approximately thirty armed and uniformed police officers followed immediately afterward. The customer who sold the drugs to the undercover officer was then identified and arrested. But the officers also searched the cash register and door receipts, confiscated cash, and detained the patrons at gunpoint. Pet. App. 52a. Despite the wide-ranging investigation, no evidence of any additional illegal activity was discovered. Pet. App. 5a.

Three months later, on March 29, 1991, law enforcement officials conducted their second raid after again sending in an undercover officer who claimed to have made a drug purchase. Pointing their weapons at the club's customers, the officers ordered them to get down on the floor. One officer pushed a

patron off a bar stool. Pet. App. 6a. Another officer pointed his shotgun in a patron's face while his finger was on the trigger. Pet. App. 6a. A group of officers took one of the petitioners outside the club alone. They pushed him and threw him against a wall and searched him. Pet. App. 53a. Although the officers searched most of the patrons, nothing illegal was found. No arrests were made, and the undercover officer was unable to identify the person from whom he claimed to have purchased drugs. Pet. App. 6a.

As the law enforcement officials were leaving, one unidentified officer told a petitioner that the police would keep coming back until the Capri Club was finally shut down. No other nightclub in Chambers County was similarly raided during the twenty-one years in which Mr. Morgan has been County Sheriff. Pet. App. 7a.

Petitioners allege that the raids and the harassment of the Capri Club clientele violated their constitutional rights. They brought suit under 42 U.S.C. § 1983, making claims against Chambers County and against Sheriff Morgan and other officers in both their official and individual capacities.

## SUMMARY OF ARGUMENT

The court of appeals decided that Chambers County, Alabama, lacks any "general law enforcement authority." Pet. App. 34a. Because the County has no law enforcement authority, the court reasoned, it was impossible for Sheriff James Morgan to be the final law enforcement official of the County. *Id.* By so holding, the court effectively immunized Chambers County from the consequences of Sheriff Morgan's actions.

The court of appeals was able to reach its conclusion only by ignoring the county-based law enforcement scheme that is clearly established under Alabama law. Although the court of appeals held that state law provides instruction on the scope of Section 1983 liability, it failed to consider Alabama law in any detail or to analyze whether county sheriffs actually function as state or county officials. When Alabama law is examined with respect to its system of law enforcement, it is clear that Chambers County provides law enforcement for the county and that Sheriff Morgan is the final policymaker for law enforcement in that county.



## ARGUMENT

### I. ALABAMA COUNTIES EXERCISE LAW ENFORCEMENT AUTHORITY AND COUNTY SHERIFFS ARE FINAL POLICYMAKING AUTHORITIES FOR LAW ENFORCEMENT IN THE COUNTIES.

The court of appeals held below that Chambers County lacks any "general law enforcement authority." Pet. App. 34a.<sup>1/</sup> Because the County has no such authority, the court reasoned, Sheriff Morgan could not be a final policymaker for the County. *Id.* Having reached these conclusions, the court of appeals held that the Chambers County Commission was not liable under 42 U.S.C. § 1983. *Id.*

The court of appeals erred by failing to examine the actual role and function of counties and county sheriffs under Alabama law. Rather than conducting a searching inquiry into Alabama law, as this Court has advised the lower courts, *see Elder v. Holloway*, 114 S. Ct. 1019, 1023 (1994),<sup>2/</sup> the court of appeals

<sup>1/</sup> We hold that Sheriff Morgan is not the final repository of Chambers County's general law enforcement authority, *because* it has none. Therefore, the county commission is not liable for the Sheriff's law enforcement actions under 42 U.S.C. § 1983, and it is entitled to summary judgment on the § 1983 claims.

Pet. App. 34a (emphasis added). The respondent concurs: "Under Alabama law, there is no such thing as county law enforcement authority." Br. in Opp. 13.

<sup>2/</sup> In *Elder v. Holloway*, this Court unanimously held that a court of appeals, in a Section 1983 qualified immunity case, should "use its 'full knowledge'" of relevant law. *Id.* (quoting *Davis v. Scherer*, 468 U.S. 183, 192 n.9 (1984)) (holding court of appeals failed to consider relevant precedent).

panel incorrectly concluded that petitioners had not cited sufficient authority.<sup>3/</sup>

Counties and municipalities are liable under Section 1983 for the acts of an official, including a law enforcement official, whose "acts may fairly be said to represent official policy" for that county or municipality. *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 694 (1978).<sup>4/</sup> A thorough examination of Alabama law, which the court of appeals failed to undertake, clearly demonstrates that counties are integrally involved in the provision of law enforcement and that sheriffs are the policymakers who direct and manage county law enforcement activities.

#### A. In Alabama, State Law Enforcement Is Performed By The State Highway Patrol And County Law Enforcement Is Performed By The County Sheriff.

Although a state could establish a law enforcement system where state law enforcement officials would work on the county level, Alabama has chosen not to do so. Rather, Alabama has established a system in which local law enforcement functions are carried out at the county level by officials who are elected and paid by the county. In fact, Alabama law itself clearly

<sup>3/</sup> The panel incorrectly stated that "[p]laintiffs have not cited us to any statutes or decisions indicating that Alabama counties, and their governing commissions, have law enforcement authority or duties." Pet. App. 33a. Petitioners here, plaintiffs and appellants below, did cite relevant portions of Alabama law. *See* Appellants' Op. Br. at 33-34, *Swint v. City of Wadley*, 5 F.3d 1435 (11th Cir. 1993) (No. 92-6574), *cert. granted*, 114 S. Ct. 2671 (1994).

<sup>4/</sup> "The bar of the Eleventh Amendment to suit in federal courts extends to States and state officials in appropriate circumstances, but does not extend to counties and similar municipal corporations." *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977).

differentiates between state law enforcement authority, which is exercised by the State Highway Patrol through its state troopers, and county law enforcement authority, which is conducted by county sheriffs. A review of this two-track Alabama law enforcement system reveals that the operations, expenses, and the obligations of the sheriff's office, including the salaries of the sheriff and all his employees, are paid by the county, and that all employees of the sheriff's office are county employees who are hired and fired by, and act at the direction of, the sheriff.

**Selection and removal.** The Alabama Code expressly empowers the state governor to "establish and maintain a state highway patrol." Ala. Code § 32-2-20 (1989).<sup>2/</sup> The Highway Patrol reports to the Department of Public Safety, whose director is appointed by and "serve[s] at the pleasure of the governor." *Id.* § 32-2-1. The Director of Public Safety is in turn responsible for creating and administering the "highway patrol division" of the Department of Public Safety. *Id.* § 32-2-3. The State Director of Public Safety appoints not only the Chief of the Highway Patrol, but "all other employees," *id.* § 32-2-4, including the state troopers who exercise the full powers of police officials throughout the state. *Id.* § 32-2-22.

The State Director of Public Safety has no power, however, to appoint a sheriff or any personnel in a sheriff's office. Instead, the sheriff is "elected in each county, by the qualified electors thereof . . . ." Ala. Const. art. V, § 138. No state official, including the Governor and the Attorney General, has the power to appoint, instruct, discipline, or remove any sheriff. The only method for "disciplining" a sheriff is by judicial impeachment in the state Supreme Court, which can be instigated only by suit filed by the Attorney General. Ala. Const. art. VII,

<sup>2/</sup> The provisions of the Alabama Code and the Alabama Constitution cited herein are included in the Appendix to this brief.

§ 174.<sup>6/</sup>

**Jurisdiction.** The jurisdiction of the State Highway Patrol is statewide and is coextensive with Alabama's borders. "Members of the state highway patrol . . . shall have the powers of peace officers in this state and may exercise such powers *anywhere within the state.*" Ala. Code § 32-2-22 (emphasis added).

County sheriffs and the law enforcement personnel they direct, however, have no jurisdiction to enforce the law outside of their respective counties. Thus, Alabama law expressly provides that:

It shall be the duty of sheriffs *in their respective counties*, by themselves or deputies, to ferret out crime, to apprehend and arrest criminals and, insofar as within their power, to secure evidence of crimes *in their counties* and to present a report of the evidence so secured to the district attorney or assistant district attorney *for the county.*

*Id.* § 36-22-3 (emphasis added). No statute provides sheriffs, deputies, or the personnel that the sheriffs direct, with any general authority to enforce the law *outside* the counties in which the sheriff is elected to serve.

**Salaries and insurance.** As state officials, the state troopers in the State Highway Patrol are paid out of the state treasury. *Id.*

<sup>6/</sup> Impeachment of a sheriff is "similar to a criminal trial," *Parker v. Amerson*, 519 So.2d 442, 444 n.1 (Ala. 1987). It differs from the impeachment of the Governor, which requires voting on articles of impeachment by the House of Representatives and a trial by the Senate. Ala. Const. art. VII, § 173.



§ 32-2-6. Moreover, they are insured by the state. *Id.* § 32-2-10.

Unlike state troopers, county sheriffs are paid directly by the county out of "the county treasury." *Id.* § 36-22-16. Counties also provide insurance for the sheriffs and their offices. See, e.g., *First Mercury Syndicate, Inc. v. Franklin County*, 623 So.2d 1075, 1075 (Ala. 1993) (county purchases professional liability insurance for sheriff).<sup>2/</sup> Even the Alabama Supreme Court, when considering the question whether county sheriffs are state officials with respect to their salaries, concluded that they are county officials. *Jefferson County v. Dockerty*, 30 So.2d 474, 477 (Ala. 1947) ("the sheriff of Jefferson County is undoubtedly a county officer") (emphasis added).<sup>3/</sup>

Respondent attempts to minimize the importance of county control over the sheriff's purse strings by noting that county sheriff salaries are regulated by statute — as if the mere fact of

<sup>2/</sup> The record below does not, to our knowledge, reveal whether the Chambers County Commission and Sheriff Morgan are jointly insured. In light of the fact that the commission and sheriff were represented by common counsel below, it is reasonable to assume either (a) that they are jointly insured, or (b) that they do not perceive a conflict of interest between themselves.

<sup>3/</sup> Jefferson County was the first county in Alabama to pay sheriffs by salary rather than by commissions and fees. *Jefferson County v. Dockerty*, 30 So.2d at 476. This change came by way of a constitutional amendment, ratified in 1912, that provided for the "allowance[] or salaries to be charged or received by any county officer of Jefferson County . . . ." Ala. Const. amend. 2. When the state legislature asked the Supreme Court to provide an advisory opinion on the question whether a sheriff (and other local officials) were "county officers" within the meaning of the Second Amendment of the Alabama Constitution, the Supreme Court confirmed that "they are, strictly speaking, county officers as included in and dealt with in said amendment." *In re County Officers*, 143 So. 345, 345 (Ala. 1932) (emphasis added).

statutory regulation were evidence that the county sheriff is in fact a state official. Br. in Opp. 9. In making this argument, however, respondent fails to acknowledge that county commissioners' salaries are *also* regulated by statute,<sup>2/</sup> but no one could argue that county commissioners are "state officials."<sup>10/</sup>

**Financing.** The State of Alabama pays for the operations and equipment of the Highway Patrol. "[T]he necessary expenses and costs of necessary equipment are likewise to be paid by warrant drawn by the comptroller on the funds appropriated by the legislature . . . ." Ala. Code § 32-2-6.

The State, however, does not fund the county sheriff's office. Rather, the county commission is responsible not only for paying the sheriff's salary, but also for financing the entire operation of the county sheriff's office. By law, the county commission must

furnish the sheriff with the necessary quarters, books, stationery, office equipment, supplies, postage and other conveniences and equipment, including automobiles and necessary repairs, maintenance and all expenses incidental thereto, as are reasonably needed for the proper and efficient conduct of the affairs of the sheriff's office.

*Id.* § 36-22-18. When county commissions have failed to provide sufficient financial resources, they have been instructed

<sup>2/</sup> See Ala. Code § 11-3-4.1 (minimum compensation of county commissioners).

<sup>10/</sup> See, e.g., *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 70 (1989).

by Alabama courts to do so. *See, e.g., Geneva County Comm'n v. Tice*, 578 So.2d 1070, 1071 n.3 (Ala. 1991) (sheriff may sue county commission when commission fails to fund sheriff's office adequately).

**Personnel decisions.** Alabama operates a State Personnel Board, which provides state employees with a mechanism to appeal adverse employment decisions. *See* Ala. Admin. Code, 670-1 (Supp. 1990). State highway department officials, for example, must petition the State Personnel Board for reinstatement decisions. *State Highway Dep't v. State Personnel Bd.*, 628 So.2d 878 (Ala. Civ. App. 1993).

By contrast, the sheriff's hiring and other personnel decisions are subject to review by the County Personnel Board. *See, e.g., Fields v. State ex rel. Jones*, 534 So.2d 615, 616-617 (Ala. Civ. App. 1987) (denial of deputy sheriff's medical leave); *Etowah County Personnel Bd. v. McDowell*, 437 So.2d 563, 563-564 (Ala. Civ. App. 1983) (termination of deputy sheriff for insubordination); *Freeman v. Purvis*, 400 So.2d 389, 390 (Ala. 1981) (merit bonus increases for sheriff's deputies reviewed by County Personnel Board).

**Payment of court costs.** In Alabama, the state pays court costs only for those law enforcement officers who, like state troopers, are part of the classified civil service of the state. *See* Ala. Code § 36-21-1.

Sheriffs and their employees are not part of the state civil service, but rather are part of the unclassified civil service of each county. *See* 1994 Ala. Pub. Act. 547. Thus, there is no statute that requires the State to pay damages for torts caused by sheriffs in their official capacities. County commissions pay all the bills of the county sheriff's department and are authorized by statute to cover the sheriff's costs in defending tort suits. Ala. Code § 11-1-9.

\* \* \*

In light of these statutory and judicial mandates, it is perfectly obvious that Alabama counties exercise significant law enforcement functions and that sheriffs are final law enforcement policymaking authorities in the counties.<sup>11/</sup> The county elects the sheriff, pays the sheriff, pays the sheriff's deputies, and finances, and equips the sheriff's office. The State, on the other hand, neither finances nor supervises the sheriff's policies. Because sheriffs function as the counties' chief law enforcement officers, counties are accountable under Section 1983 for the sheriffs' unconstitutional actions.

**B. It Is Clear That The Sheriff Is The Final Law Enforcement Policymaker Because No Person Outside the County Has Been Or Can Be Identified As The Final Law Enforcement Official For The County.**

In holding that Chambers County exercises no "general law enforcement authority," the court of appeals implicitly suggests that law enforcement in the County is actually administered by the State. Although a state theoretically could administer all law enforcement activities in its counties, the court of appeals failed to determine whether such is actually the case in Alabama. The fact that Alabama has not established state control over county law enforcement is confirmed not only by Alabama law as discussed above, but by the absence of *any* state official outside

<sup>11/</sup> This legal understanding fully accords with the common understanding we all have concerning the role of a sheriff. *See American Heritage Dictionary of the English Language* 1663 (3d ed. 1992) (defining "sheriff" as the "chief law enforcement officer . . . in a U.S. county"); *Webster's New International Dictionary of the English Language* 2311 (2d unab. 1954) (defining "sheriff" as the "chief executive officer of a shire or county, charged with the execution of the laws, the serving of judicial writs and processes, and the preservation of the peace").



the county who has *any* control over the county sheriff's policies.

Under this Court's guidelines, the absence of any responsible party outside the county compels the conclusion that the county is liable for the sheriff's actions. This Court has previously ruled that the lower courts, through recourse to state law, should identify which officials are responsible for establishing policy in a particular area. As this Court has noted:

we can be confident that state law (which may include valid local ordinances and regulations) *will always direct a court to some official or body that has the responsibility for making law or setting policy* in any given area of a local government's business.

*St. Louis v. Praprotnik*, 485 U.S. 112, 125 (1988) (plurality opinion) (emphasis added). If the county is not liable under Section 1983 for the sheriff's actions, that could only be because someone other than the sheriff or county is responsible for law enforcement matters.

Neither the court of appeals nor the respondent identified any official or body *outside* the county "that has the responsibility for making law or setting policy," *id.*, with respect to the action at issue here: Sheriff Morgan's authorization of the raids. In fact, the very Alabama scheme on which the court of appeals purports to rely identifies no state executive official with any responsibility for supervising or disciplining Sheriff Morgan. Neither the Governor, the Attorney General, the Director of Public Safety, nor any other person supervises his actions.

— Absent a basis for concluding that the State in fact actually operates the county sheriffs' offices, counties must be held liable for the actions of the counties' chief law enforcement officers. There is no question that, under Alabama law and practice,

county sheriffs function as the final arbiters of law enforcement matters in their respective counties. Hence, the county government is liable for the sheriff's actions.

## II. COUNTIES ARE LIABLE FOR THE OFFICIAL ACTS OF COUNTY SHERIFFS.

The Eleventh Circuit has previously held that Florida counties are liable for the official actions of county sheriffs. *Lucas v. O'Loughlin*, 831 F.2d 232 (11th Cir. 1987), *cert. denied*, 485 U.S. 1035 (1988). Unlike the panel deciding this case below, the Eleventh Circuit in *Lucas* carefully examined Florida's law enforcement structure. Rejecting the very arguments being made by respondent here, the *Lucas* court pointed to the factors making counties liable for the actions of their sheriffs. In an analysis that would apply equally to Alabama, the Eleventh Circuit held that a county was liable for the sheriff's actions because:

His salary and that of his deputies were paid out of county funds. These salaries and the expenses of his office, including the operation and maintenance of the jail, were budgeted each year by the sheriff and submitted to the board of county commissioners . . . .

. . . . Although elected by virtue of state law, he was elected to serve the county as sheriff. In that capacity, he had absolute authority over the appointment and control of his deputies. His and their salaries were paid by local taxation and according to a budget approved by the county commissioners. We conclude, therefore, that his act was the act of [the] County. The trial court erred in dismissing the

county as a defendant.

*Id.* at 234, 235. If the court of appeals in its decision below had asked the same questions it posed in *Lucas*, it would have been compelled to conclude that sheriffs are final policymakers and that counties are liable for the sheriffs' actions. The court of appeals' conclusion below resulted in large measure from its failure to inquire into Alabama law.

Other courts of appeals follow the same line of reasoning the court of appeals applied in *Lucas*. The First Circuit, for example, found that a Massachusetts county was liable for a sheriff's Section 1983 violation "because the Sheriff was the county official who was elected by the County's voters to act for them and to exercise the powers created by state law." *Blackburn v. Snow*, 771 F.2d 556, 571 (1st Cir. 1985).

The Fifth Circuit has similarly construed Texas law where the county sheriff is directly elected by the citizens of the county. A popularly elected sheriff

hold[s] virtually absolute sway over the particular tasks or areas of responsibility entrusted to him by state statute and is accountable to no one other than the voters for his conduct therein . . . [H]is official conduct and decisions must necessarily be considered those of one 'whose edicts or acts may fairly be said to represent official policy' for which the county may be held responsible under section 1983.

*Turner v. Upton County*, 915 F.2d 133, 136 (5th Cir. 1990), *cert. denied*, 498 U.S. 1069 (1991) (quoting *Familias Unidas v. Briscoe*, 619 F.2d 391, 404 (5th Cir. 1980) and *Monell v. Dep't of Social Servs.*, 436 U.S. at 694). The Sixth Circuit also held

the county liable for a sheriff's action, even though the state constitution explicitly provided that counties do "not make policy for the Sheriff's Department." *Marchese v. Lucas*, 758 F.2d 181, 188 (6th Cir. 1985), *cert. denied*, 480 U.S. 916 (1987). In holding the county liable, the court pointed to how Michigan law functions:

The County, through its Board of Supervisors, appropriates funds and establishes the budget for the Sheriff's Department. The Sheriff is elected by the voters of Wayne County. No doubt he is responsible for enforcing state law and presumably federal law as well. But equally clearly he is not an official of the State of Michigan or of the federal government.

*Id.*, 758 F.2d at 189. Courts have thus held counties liable for sheriffs' actions where, as here, counties elect and finance the sheriffs.

Courts also hold counties liable for a sheriff's actions where the sheriff, as is also the case in Alabama, reports to no higher state or county official. The Fifth Circuit found, for example, that an Arkansas sheriff, who has a "statutory duty to perform law enforcement activities in and for the county, is solely responsible for the procedures and practices of the department; there is no legislative or other higher body, beyond a court of law, to which the sheriff answers." *Crowder v. Sinyard*, 884 F.2d 804, 828 (5th Cir. 1989), *cert. denied*, 496 U.S. 924 (1990) (citation omitted). In these circumstances, sheriffs are "final policymaking authorit[ies]" and counties are liable for their actions. *Id.* at 829.

In *Davis v. Mason County*, the Ninth Circuit held that a sheriff can be a "final authority" with respect to one policy, even if he or she is not the final authority with respect to other



policies. 927 F.2d 1473, 1480-81 (9th Cir.), *cert denied*, 112 S. Ct. 275 (1991). In Oklahoma, where the sheriff "was responsible for establishing the county's policy regarding the use of force," it was held that the county may be liable for the excessive force used by personnel within the sheriff's office. *Meade v. Grubbs*, 841 F.2d 1512, 1530 (10th Cir. 1988). The Fourth Circuit even rejected a county's argument that a sheriff is immune where the governor appoints the sheriff and where state courts have decided that sheriffs are state officers. *Dotson v. Chester*, 937 F.2d 920, 926, 927, 932 (4th Cir. 1991) (sheriff is liable under Section 1983 where violation occurred at county-financed jail operated by sheriff even when sheriff is immune for other purposes).

Other than the decision of the panel below, only one pertinent decision of a court of appeals declined to find a county liable for the acts of its sheriff. There the court also did not consider state law in any detail. *Soderbeck v. Burnett County*, 752 F.2d 285, 292 (7th Cir. 1985) (county sheriff held not a policymaker where "plaintiff made no effort to show that the sheriff is a policy-making official of the county government"). See also *Soderbeck v. Burnett County*, 821 F.2d 446, 452 (7th Cir. 1987), *cert. denied*, 471 U.S. 117 (1985) (refusing to consider such evidence newly offered by the plaintiff because of the "law of the case doctrine"). Thus, even in *Soderbeck*, the court accepted the county's liability defense reluctantly, and only because the plaintiff did not introduce any evidence of the sheriff's actual activities.<sup>12/</sup>

<sup>12/</sup> For the reasons stated in the text and at note 2 above, the Seventh Circuit's decision also may conflict with this Court's reasoning in *Elder v. Holloway*, 114 S. Ct. 1019.

### III. ALABAMA CANNOT IMMUNIZE OFFICIALS OR COUNTIES FROM LIABILITY FOR INJURIES COMPENSABLE UNDER SECTION 1983.

Alabama courts apparently hold that county sheriffs are state officials for purposes of immunizing them from liability under state law. See, e.g., *Parker v. Amerson*, 519 So. 2d at 442. Indeed it appears that Alabama courts sometimes take an expansive notion of the scope of state immunity.<sup>13/</sup> Alabama courts, applying state immunity law to sheriffs, do so largely because sheriffs are technically designated as members of the "executive department" under the State Constitution. *Id.* at 443-44. See also Ala. Const. art. V, § 112.

Although it cited the *Amerson* decision, the court of appeals wisely declined to assume that immunity from state claims translates into immunity from Section 1983 claims. Pet. App. 33a. Indeed, the opinion below suggests that the court of appeals itself has some doubts about the scope of state law immunity claimed by the Alabama courts.<sup>14/</sup>

Section 1983 liability for a governmental official does not depend on the particular designation or label (such as "state official" or "county official") that the state attaches to that

<sup>13/</sup> The Alabama Supreme Court once went so far as to immunize municipal police officials from liability because they hold "a public office of profit under the state." *Alexander v. State ex rel. Carver*, 150 So.2d 204, 208 (Ala. 1963).

<sup>14/</sup> The court of appeals panel held that "the fact that an Alabama sheriff 'works' for the state does not answer the question of whose policy he implements." Pet. App. 33a (citing *Parker v. Williams*, 862 F.2d 1471, 1478 (11th Cir. 1989)). By placing the term "works" in quotation marks, the court of appeals reveals its reluctance to accept the premise that sheriffs actually work for the state rather than for the counties.

official for its own purposes. The wide variety of state constitutional labels for county sheriffs is reason enough for not measuring Section 1983 liability by reference to such labels.<sup>15/</sup>

When analyzing whether an official is a policymaker for a local government, this Court examines how the official functions under state law and does not defer to the label that state governments may attach to the official. See, e.g., *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. at 280; *Pembaur v. Cincinnati*, 475 U.S. 469, 483 n.12 (1986) (whether a county sheriff is final policymaker depends on local rules about the sheriff's function in county government); *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989) (whether a school principal is final policymaker depends on a careful analysis of local regulations and policies); *St. Louis v. Praprotnik*, 485 U.S. 112, 124-127 (1988) (there is "a rich variety of ways in which the power of government is distributed," and a court must scrutinize local rules to determine how and by whom decisions are made).

This Court has consistently and appropriately rejected a mechanistic, label-oriented approach precisely because of the potential to undermine the broad remedial goals of Section 1983. Accordingly, this Court has emphasized that "[a]ny assessment of the applicability of a state law to federal civil rights litigation, therefore, must be made in light of the purpose and nature of the federal right." *Felder v. Casey*, 487 U.S. 131, 139 (1988). A

<sup>15/</sup> Under the Alabama Constitution, elected county sheriffs are technically part of the state executive branch. Ala. Const. art. V, § 112. In Texas, Louisiana, and Maryland, elected county sheriffs are part of the state judicial branch. Tex. Const. art. V, § 23; La. Const. art. V, § 27 (for "parish" sheriffs); Md. Const. art. IV, § 44. In Indiana, elected county sheriffs are part of the "administrative" branch. Ind. Const. art. VI, § 2. And in other states, such as Kansas, elected county sheriffs are wholly the creation of the legislature, having no constitutional status whatsoever. Kan. Const. art. IX, § 2.

"state law that immunizes government conduct otherwise subject to suit under § 1983 is preempted . . . because the application of the state immunity law would thwart the congressional remedy . . . ." *Id.*

This Court has held, unanimously, that "a State cannot immunize an official from liability for injuries compensable under federal law." *Howlett v. Rose*, 496 U.S. 356, 360 (1990) (citing *Martinez v. California*, 444 U.S. 277 (1980)). Any decisions by Alabama courts that might be used to limit the scope of Section 1983 liability should fail as a matter of federal law. *Howlett v. Rose*, 496 U.S. at 376-77. It has long been the rule that "any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." *Felder v. Casey*, 487 U.S. at 138 (quoting *Free v. Bland*, 369 U.S. 663, 666 (1962)).

Under Section 1983, the inquiry this Court has prescribed is one that looks to whether an official's "acts may fairly be said to represent official policy" for the county. *Monell v. Dep't of Social Servs.*, 436 U.S. at 694. Under this inquiry, state-law functions — rather than state-law labels — are decisive.

## CONCLUSION

Alabama law provides that counties have law enforcement powers and it establishes county sheriffs as law enforcement policymakers for each county. The sheriffs are elected by the county and are paid by the county. Their offices are funded by the county treasury. They have jurisdiction only in their own counties and do not report to any official outside the county. In Alabama, county sheriffs are, as a matter of law, final law enforcement policymakers at the county level.

For the same reason that Alabama cannot immunize its



sheriffs from Section 1983 liability by broadly construing the state's sovereign immunity doctrine, Alabama cannot shield its counties from Section 1983 liability by technically designating county sheriffs as state officials when such a designation does not correspond to the way in which sheriffs actually exercise their law enforcement authority.

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## APPENDIX

### ALABAMA CONSTITUTION

#### ARTICLE V.

##### Sec. 112. Composition, officers enumerated.

The executive department shall consist of a governor, lieutenant governor, attorney-general, state auditor, secretary of state, state treasurer, superintendent of education, commissioner or agriculture and industries, and a sheriff for each county.

##### Sec. 138. Election and term of office of sheriffs; sheriff not eligible to succeed self; impeachment of sheriff; effect of impeachment of sheriff.

A sheriff shall be elected in each county by the qualified electors thereof, who shall hold office for a term of four years, unless sooner removed, and he shall be ineligible to such office as his own successor; provided, that the terms of all sheriffs expiring in the year nineteen hundred and four are hereby extended until the time of the expiration of the terms of the other executive officers of this state in the year nineteen hundred and seven, unless sooner removed. Whenever any prisoner is taken from jail, or from custody of any sheriff or his deputy, and put to death, or suffers grievous bodily harm, owing to the neglect, connivance, cowardice, or other grave fault of the sheriff, such sheriff may be impeached under section 174 of this Constitution. If the sheriff be impeached, and thereupon convicted, he shall not be eligible to hold any office in this state during the time for which he had been elected or appointed to serve as sheriff.

(2a)

## ALABAMA CONSTITUTION

### ARTICLE VII.

**Sec. 173. Governor, lieutenant governor, attorney-general, state auditor, secretary of state, state treasurer, superintendent of education, commissioner of agriculture and industries and justices of supreme court.**

The governor, lieutenant-governor, attorney-general, state auditor, secretary of state, state treasurer, superintendent of education, commissioner of agriculture and industries, and justices of the supreme court may be removed from office for willful neglect of duty, corruption in office, incompetency, or intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such duties, or for any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith, by the senate sitting as a court of impeachment, under oath or affirmation, on articles or charges preferred by the house of representatives . . . .

**Sec. 174. Chancellors, judges of circuit and probate courts, judges of courts from which appeal may be taken directly to supreme court, solicitors and sheriffs.**

The chancellors, judges of the circuit courts, judges of the probate courts, and judges of other courts from which an appeal may be taken directly to the supreme court, and solicitors and sheriffs, may be removed from office for any of the causes specified in the preceding section or elsewhere in this Constitution, by the supreme court, under such regulations as may be prescribed by law. The legislature may provide for the impeachment or removal of other officers than those named in

(3a)

this article.

## ALABAMA CODE

**§ 11-1-9. Payment of costs of defense of lawsuits against county officials; validation of prior payments.**

(a) Any law to the contrary notwithstanding, the county commission of any county of the state of Alabama may, in its discretion, defray the costs of defending any lawsuit brought against any county official when such lawsuit is based upon and grows out of the performance by said official of any duty in connection with his office and does not involve a willful or wanton personal tort or a criminal offense committed by the official. The expenses of defending such litigation may include witness fees, transportation, toll and ferry expenses of witnesses, attorney's fees, court costs and any other cost in connection with the defense of said litigation.

(b) If any county has expended money for the purposes set out in subsection (a) of this section, such expenditure is hereby validated and shall not be charged back to the official making such payment nor shall the person who received such payment be liable for any reimbursement of same.

**§ 11-3-4.1 Minimum compensation of county commissioners and county chairman; approval of county governing body; compliance with payment of judicial supplement.**

(a) For the purposes of this section the following terms shall have the following meanings:

(1) **COUNTY COMMISSION CHAIRMAN.** Those persons elected or appointed to such office by any and all lawful means but shall not include those persons who serve as chairman

(4a)

by virtue of their having been elected or appointed as probate judge of the county.

(2) **COMPENSATION.** All salary, expense allowance or any other compensation received for serving as commissioner or chairman of the county commission but shall not include any reimbursement for mileage traveled or actual and necessary expenses incurred which are otherwise payable by law.

(3) **LOCAL LAW.** Any and all applicable statutes that apply to any part of the state which is less than the whole and shall include statutes otherwise known as "general laws of local application" or "population bracket acts."

(b) No county commissioner shall receive compensation for serving as such officer, that is less than \$14,600.00 per year. No county commission chairman shall receive compensation for serving as such officer, that is less than \$18,600.00 per year.

(c) No county commissioner that is required by local law to serve full time as county commissioner, shall receive compensation for serving as such officer, that is less than \$25,000.00 per year. No county commission chairman that is required by local law to serve full time as county commission chairman, shall receive compensation for serving as such officer, that is less than \$30,000.00 per year . . . .

**§ 32-2-1. Creation; headed by director; appointment and term of director.**

There is hereby created a department of the state of Alabama which shall be known as the department of public safety and shall be headed by the director of public safety. The governor shall appoint the director, who shall serve at the pleasure of the governor.

(5a)

**§ 32-2-3. Divisions — Creation; enumeration.**

The director shall create such divisions within the department of public safety as shall be necessary. Said divisions shall include:

- (1) An administrative division;
- (2) A highway patrol division;
- (3) A driver's license division;
- (4) A service division.

**§ 32-2-4. Same — Chiefs; employees.**

The director shall appoint chiefs of said divisions and all other employees subject to the provisions of the Merit System Act, and said chiefs and employees shall hold their positions subject to the provisions of the Merit System Act.

**§ 32-2-6. Compensation and expenses of officers, employees, etc. — Method of payment generally.**

The compensation of the officers, agents and employees provided for by this chapter shall be paid by warrants drawn by the comptroller on the funds appropriated by the legislature therefor as the salaries of state officials and employees are paid, and the necessary expenses and costs of necessary equipment are likewise to be paid by warrant drawn by the comptroller on the funds appropriated by the legislature therefor, and the amount to be expended hereunder shall be limited to the amount appropriated therefor by the legislature and shall be budgeted, allotted and expended pursuant to article 4 of chapter 4 of Title 41 of this Code.



(6a)

**§ 32-2-10. Insurance for employees.**

The state department of public safety is authorized, subject to approval by the governor, to insure its employees in some insurance company or companies authorized to do business in the state of Alabama against personal injury or death caused by accident or violence while discharging their duties as such employees; provided, the amount of insurance to be procured as to any such employee shall not exceed the amount which would be payable to such employee under the workmen's compensation laws of the state of Alabama if such employee were privately employed; except, that such policy may provide additional benefits not to exceed \$10,000.00 per employee for the payment of hospital and medical expenses.

The cost of such insurance shall be paid by the state department of public safety out of any funds appropriated to its use in manner provided by law.

**§ 32-2-20. Establishment and maintenance.**

The governor is authorized to establish and maintain a state highway patrol.

**§ 32-2-22. Officers have powers of peace officers.**

Members of the state highway patrol, when duly appointed, shall have the powers of peace officers in this state and may exercise such powers anywhere within the state.

**§ 36-21-1. Payment of fees and costs of defense of state law enforcement officers in certain cases.**

Any law enforcement officer of the state of Alabama who is sued or prosecuted for any act committed or done within the line and scope of his duties and authority will be reimbursed by the

(7a)

state for legal counsel fees paid, the fees of witnesses paid by him and costs of court he paid out in defending the civil action or prosecution; provided, that the total amount of such reimbursable expenses shall not exceed \$2,000.00 and provided the committee established by this section approves such claim. The committee shall consist of two members of the house of representatives named by the speaker, two members of the senate named by the president of the senate and the attorney general of Alabama. The members of the committee shall serve during their tenure in their respective offices without compensation. The acts of any three members shall constitute action by the committee. The committee shall elect a chairman from among its number and shall meet on the call of the chairman.

As used in this section the term "law enforcement officer" means any person employed in the classified civil service of the state whose duties involve police work.

**§ 36-22-3. Duties [of sheriffs] generally.**

It shall be the duty of the sheriff:

(1) To execute and return the process and orders of the courts of record of this state and of officers of competent authority with due diligence when delivered to him for that purpose, according to law.

(2) To attend upon the circuit courts and district courts held in his county when in session and the courts of probate, when required by the judge of probate, and to obey the lawful orders and directions of such courts.

(3) The sheriff of each county must, three days before each session of the circuit court in his county, render to the county treasury or custodian of county funds a statement in writing and on oath of the moneys received by him for the county, specifying



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the amount received in each case, from whom and pay the amount to the county treasurer or custodian of county funds.

(4) It shall be the duty of sheriffs in their respective counties, by themselves or deputies, to ferret out crime, to apprehend and arrest criminals and, insofar as within their power, to secure evidence of crimes in their counties and to present a report of the evidence so secured to the district attorney or assistant district attorney for the county.

(5) To perform such other duties as are or may be imposed by law.

**§ 36-22-16. Compensation.**

(a) Sheriffs of the several counties in this state shall be compensated for their services by an annual salary payable in equal installments out of the county treasury as the salaries of other county employees are paid. The annual salary of the sheriff shall be \$35,000.00, commencing with the next term of office, unless a higher salary is specifically provided for by law by the general or local act hereafter enacted.

(b) Such salary shall be in lieu of all fees, compensation, allowance, percentages, charges and costs, except as otherwise provided by law. The sheriff and his deputies shall, however, be entitled to collect and retain such mileage and expense allowance as may be payable according to law for returning or transferring prisoners and insane persons to or from points outside the county.

**§ 36-22-18. County commission to furnish necessary quarters, equipment, etc.**

The county commission shall also furnish the sheriff with the necessary quarters, books, stationery, office equipment, supplies, postage and other conveniences and equipment, including

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automobiles and necessary repairs, maintenance and all expenses incidental thereto, as are reasonably needed for the proper and efficient conduct of the affairs of the sheriff's office.